

## SECTION 5. FINANCIAL PROVISIONS

- 5.1 Each Contributing Participant will, in accordance with the provisions of this MOU, contribute its equitable share of the costs of the ESSM Production Phase and will receive equitable benefits. The contributions are divided into financial contributions and Nonfinancial Contributions. The U.S. dollar will be the reference currency for the ESSM Production Phase, and the program fiscal year (FY) will be the U.S. fiscal year.
- 5.2 The Nonrecurring Costs will not exceed a Cost Ceiling of \$40M in FY 96 constant year U.S. dollars. This Cost Ceiling may only be changed by amendment to this MOU in accordance with Section 19 (Amendments). The financial contribution required for Nonrecurring Costs will be shared as set forth in Annex A (Financial Matters) Tables A-1 and A-2. These tables will be adjusted only when a Participant's missile orders exceed the minimum basis values in Annex A (Financial Matters) Tables A-1 and A-2. Nonrecurring Costs will be reallocated after each adjustment to Tables A-1 and A-2 of Annex A (Financial Matters).
- 5.3 The Recurring Costs will not exceed an average annual Cost Ceiling of \$23M in FY96 constant year U.S. dollars over the duration of this MOU. This Cost Ceiling may only be changed by amendment to this MOU in accordance with Section 19 (Amendments). The annual financial contribution requirement for Recurring Costs will be shared as set forth in Annex A (Financial Matters) Table A-1. The existing U.S. DoD production tooling, handling equipment, and test equipment listed in Annex A (Financial Matters) Table A-5 will be used for ESSM production throughout the duration of the ESSM Production Phase. The total annual financial contributions required for Recurring Costs will include \$1.8M in FY96 constant year U.S. dollars for such use, and the U.S. DoD will be compensated this amount through annual reductions to its share of the total annual Recurring Costs. Annex A (Financial Matters) Table A-1 will be adjusted as set forth in paragraph 5.2 above, and the annual financial contribution required for Recurring Costs will be adjusted accordingly for the fiscal year in which the adjustment to Table A-1 of Annex A (Financial Matters) occurs and all subsequent fiscal years.
- 5.4 Estimates of the ESSM production requirements and estimated costs to the Participants are given in Annex A (Financial Matters) Tables A-3 and A-4, respectively. Each Participant will furnish, through its NSPSC member, annual updates to its estimated production requirements not under contract for revision to Annex A (Financial Matters) Table A-3. The NSPO PM will provide annual updates to Annex A (Financial Matters) Table A-4 reflecting revised quantity and missile cost estimates for NSPSC approval and incorporation into Annex A (Financial Matters) in an approved revision to Table A-4. The values of Annex A (Financial Matters) Table A-4 will be used by the NSPO in preparing the annual financial schedules for NSPSC approval. The Participants, by signing this MOU, have signified their intent to procure ESSM quantities required to meet their national requirements and will provide annual updates of their future requirements to the NSPSC; however, the financial obligation of a Participant with respect to missile

procurements arises only when firm orders are placed with the NSPO based upon the then applicable missile costs as provided by the NSPO PM.

- 5.5 Those costs associated with production and related items and services intended solely and exclusively for use by a Contributing Participant will be paid by that Participant, except that the unit cost of missiles, missile sections, and components to be paid by each Participant will be the average cost of such missiles, missile sections and components over a Contracting period ending after placement of the 1000th missile order and each succeeding 1000th missile order, including those missiles produced during low rate initial production. Each such Contracting period will independently provide the average price applicable to orders placed in that interval.
- 5.6 Each Contributing Participant will make funds available in such amounts and at such times as may be required by the NSPSC's approved annual financial schedules to execute the ESSM Production Phase pursuant to this MOU. Adjustments required, to implement the provisions of paragraph 1.a. of Annex C (Production Phase Principles) of the Addendum, including any outstanding obligations to Non-contributing Participants, will be incorporated into NSPO-developed financial schedules after the first 1000th missile order has been placed on Contract and thereafter, annually. Approval by the NSPSC of these periodic financial schedules will be deemed to signify the approval of each member to the treatment of costs included therein as ESSM Production Phase Shared / National Costs and to the method of sharing such costs. In accordance with procedures to be promulgated by the NSPSC, the NSPO will prepare and submit for NSPSC approval any necessary revisions and updates to the annual financial schedule within Cost Ceilings.
- 5.7 The following costs will be borne entirely by the Participant incurring the costs or on whose behalf the costs are incurred:
  - 5.7.1 Costs associated with national representation at meetings.
  - 5.7.2 Costs associated with any unique national requirements identified by a Participant not included under paragraph 5.5 above.
- 5.8 All activities of the Participants in this MOU will be carried out in accordance with their national laws and the financial obligations of the Participants will be subject to the availability of funds for such purposes.
- 5.9 A Contributing Participant will promptly notify and consult with the other Participants if available funds are not adequate to fulfill its financial obligations under this MOU and will then withdraw in accordance with Section 20 (Withdrawal, Termination, Entry into Effect and Duration).
- 5.10 Payment of the financial share of each Contributing Participant to the ESSM Production Phase Shared Costs will be made in accordance with financial schedules approved by the NSPSC. Payments of the amounts of ESSM Production Phase National Costs will be made in accordance with schedules agreed to between the NSPO PM and the individual

Participant(s) consistent with paragraph 5.4 above. Each Participant will effect payments as directed by the NSPSC to minimize ESSM Production Phase Costs. Unless otherwise directed by the NSPSC to minimize currency exchange and other ESSM Production Phase costs, each Participant, other than the U.S. DoD, will effect payments by deposit of the amounts thereof in U.S. dollars in a NSPO trust account established and administered by the NSPO PM in accordance with rules promulgated by the NSPSC. Payments by the U.S. DoD will be deemed to have been effected upon the receipt by the NSPO PM of a statement indicating that funds in the requisite amounts are available for obligation and expenditure. The funds deposited in the NSPO trust account will be available to meet ESSM Production Phase Shared Costs and ESSM Production Phase National Costs. All transfers of funds out of the trust account will be certified by the NSPO PM, or by a duly authorized representative appointed by the NSPO PM to make such certification in his absence, as being for payment of depositors' shares determined in accordance with and for the purposes of this MOU. Should any of the Participants fail to make a payment of its financial share at the time required by the financial schedule, and as a result, the NSPO PM is unable to cover the necessary expenses, the NSPO PM will report such shortfall to the NSPSC, which will promptly resolve the matter.

- 5.11 The NSPSC, through the NSPO PM, will maintain continuing financial records of funds under its control, costs incurred, and expenditures made. Such records will be available for audit upon reasonable prior notice by a duly authorized representative of a Contributing Participant. The audit of the NSPO for the ESSM Production Phase will be performed by the U.S. DoD on behalf of the Participants. Reports of such audits will be released without any restrictions to all Contributing Participants. The Participants will assist the U.S. DoD on any audit elements required to satisfactorily perform the audit. Where national auditors of a Contributing Participant need to obtain or to inspect specific ESSM Production Phase financial data relevant to that Contributing Participant to be able to fulfill its national obligations, the U.S. DoD will grant access to such specific financial information.
- 5.12 The Participants recognize that it may become necessary for the U.S. DoD to incur contractual or other obligations for the benefit of the other Participants prior to the receipt of the Participants' funds to meet ESSM Production Phase requirements as reflected in the NSPSC-approved ESSM Production Phase budget. In the event that the U.S. DoD incurs such contractual or other obligations for the benefit of the other Participants prior to receipt of the Participants' funds, the Participants will pay their equitable share of such obligations, make funds available in such amounts and at such times as may be required by the obligations, or pay any damages and costs that may accrue from the performance of or cancellation of the obligations in advance of the time such payments, damages, or costs are due.

## SECTION 6. CONTRACTUAL PROVISIONS

- 6.1 It is anticipated that the U.S. DoD acting through the Department of the Navy will contract for the benefit of the Participants throughout the ESSM Production Phase in accordance with U.S. Contracting laws and procedures. However, the NSPO, after consultation with the U.S. Contracting Officer, may request a Participant other than the U.S. to issue Contracts for the benefit of the Participants throughout the ESSM Production Phase in accordance with that Participant's established national Contracting laws and procedures. The Contracting Officer will, when it facilitates satisfying the objectives of this MOU, seek waivers of national regulations, procurement procedures, and practices. The Contracting Officer for each Contract is the exclusive source for providing contractual direction and instructions to Contractors.
- 6.2 The NSPO PM is responsible for development of the Contracting strategy for the ESSM Production Phase, which could include the use of directed sole source and multiyear Contracting strategies. The Contracting strategy will be approved by the NSPSC.
- 6.3 The NSPO PM will develop Statements of Work prior to release of solicitations, and the NSPSC will endorse negotiated Contracts, as required in paragraph 4.5.5 of Section 4 (Management), prior to execution to ensure that these Contracts are in accordance with this MOU.
- 6.4 The Contracting Officer will negotiate to obtain the rights to disclose and use ESSM Production Phase Information required by Section 9 (Disclosure and Use of ESSM Production Phase Information). The Contracting Officer will insert into prospective Contracts (and require its Contractors to insert into subcontracts) suitable provisions to satisfy the requirements of this MOU, including Section 7 (Work Sharing), Section 9 (Disclosure and Use of ESSM Production Phase Information), Section 12 (Security), and Section 13 (Third Party Sales and Transfers). During the Contracting process, the Contracting Officer will advise prospective Contractors of their obligation to immediately notify the Contracting Agency, before Contract award, if they are subject to any license or agreement that will restrict their freedom to disclose information or permit its use. The Contracting Officer will also require prospective Contractors to employ their best efforts not to enter into any new agreement or arrangement that will result in such restrictions.
- 6.5 In the event the Contracting Officer is unable to secure adequate rights to use and disclose ESSM Production Phase Information, as required by Section 9 (Disclosure and Use of ESSM Production Phase Information), or is notified by Contractors or potential Contractors of any restrictions on the disclosure and use of information, the matter will be referred to the NSPSC for resolution.
- 6.6 Each Contracting Officer will immediately advise the NSPO PM of any cost growth, schedule change, or performance problems of any Contract for which that Contracting Officer is responsible.

- 6.7 Upon request of the Contracting Agency, Contributing Participants will provide quality assurance, inspection / acceptance, Contract audit, and Participant property management services in connection with the placement and administration of Contracts and subcontracts in their nations. These services will be provided by each Participant through normal Government administrative agencies.
- 6.8 The Participants recognize that it may have been necessary for the United States to award an initial ESSM preproduction engineering Contract and other associated efforts prior to entry into effect of this MOU. These efforts would have been within the scope of Section 2 (Objectives) and Section 3 (Scope of Work) of this MOU had the MOU been in effect at the time of Contract award, and such efforts would have been awarded prior to entry into effect of this MOU solely to meet the schedule requirements of the Participants. Such Contract(s) and associated efforts will become part of the ESSM Production Phase at an amount which will not exceed \$5.0M (FY96 constant year U.S. dollars). The Participants' rights and responsibilities regarding those Contract(s) will accrue in the same manner as they would have had the Contract(s) been entered into after the entry into effect of this MOU.

## SECTION 7. WORK SHARING

- 7.1 The objective of work share distribution amongst the Contributing Participants is that each Contributing Participant will achieve work share value equal to its cost share. The attainment of this objective will be consistent with high technical merit, reasonable cost, and the need to achieve the timely, economic, and efficient execution of this MOU.
- 7.2 ESSM Production Phase costs to be used in allocation of work share include Nonrecurring Costs, Recurring Costs and costs of missiles, missile sections, and missile components less the cost of rocket motors produced in Norway. The value of work performed by each Participant (Government or Industry sources) in 1996 U.S. dollars cumulative over the term of this MOU will be equal to the applicable then year costs de-escalated to FY 96 dollars contributed by that Participant allowing for plus or minus twenty percent ( $\pm 20\%$ ) deviation.
- 7.3 Norwegian work share will be achieved through manufacture of the rocket motors.
- 7.4 The NSPSC will be responsible for monitoring work share achieved and projected throughout the term of this MOU and will direct the NSPO PM to adjust work share to meet the requirements of this section in the next new procurement immediately following each 1000th missile order. If during the course of executing the ESSM Production Phase a Contributing Participant considers that it will fail to obtain its share of the work relative to its cost share over the duration of this MOU, as set forth in paragraph 7.1 above, that Participant may raise the matter for resolution by the NSPSC. Where the NSPSC determines that a Contributing Participant will not receive at least 80 percent (80%) of its share of the work relative to its cost share over the duration of this MOU, the NSPSC will redress any imbalance.
- 7.5 Where the NSPSC is unable to redress an individual Participant's work share imbalance as required in paragraph 7.4, that Participant is entitled to engage in discussions with ESSM Production Phase Contractors to identify other potential remedial alternatives.
- 7.6 Work share requirements associated with ESSM improvements or other initiatives under this MOU will be determined by the NSPSC.
- 7.7 No requirement will be imposed by any Participant for work sharing or for other industrial or commercial compensation in connection with this document that is not in accordance with this MOU.

## SECTION 8. ESSM PRODUCTION PHASE EQUIPMENT

- 8.1 Each Participant may provide ESSM Production Phase Equipment identified as being necessary for executing this MOU to the other Participants. Such equipment will remain the property of the providing Participant. A list of all ESSM Production Phase Equipment provided by one Participant to another Participant will be developed and maintained by the NSPO PM and approved by the NSPSC in accordance with Section 4 (Management (Organization and Responsibility)) prior to such transfers.
- 8.2 The receiving Participant(s) will maintain any such ESSM Production Phase Equipment in good order, repair, and operable condition and return the items in as good condition as received, normal wear and tear excepted. The receiving Participant(s) will pay the cost of damage to (other than normal wear and tear) or loss of ESSM Production Phase Equipment.
- 8.3 All ESSM Production Phase Equipment that is transferred will be used by the receiving Participant(s) only for the purposes of carrying out this MOU. In addition, in accordance with Section 13 (Third Party Sales and Transfers), ESSM Production Phase Equipment will not be retransferred to a Third Party without the prior written approval of the providing Participant.
- 8.4 ESSM Production Phase Equipment transferred to one or more Participants under this MOU will be returned to the providing Participant prior to the termination or expiration of this MOU.
- 8.5 Any ESSM Production Phase Equipment which is cooperatively acquired on behalf of the Participants for use under this MOU will be disposed of prior to the expiration of the ESSM Production Phase, as determined by the NSPSC.
- 8.6 Disposal of cooperatively acquired ESSM Production Phase Equipment may include a transfer of the interest of one Participant in such equipment to another Participant or the sale of such equipment to a Third Party in accordance with Section 13 (Third Party Sales and Transfers) of this MOU. The Contributing Participants will share the consideration from cooperatively acquired ESSM Production Phase Equipment transferred or sold as determined by the NSPSC.

## SECTION 9. DISCLOSURE AND USE OF ESSM PRODUCTION PHASE INFORMATION

### 9.1 General

- 9.1.1 All Participants recognize that successful collaboration depends on full and prompt exchange of information necessary for carrying out the ESSM Production Phase. The Participants will receive ESSM Production Phase Information and will acquire rights to use such information to enable the execution of the ESSM Production Phase and subsequent further improvements of the ESSM. The nature and amount of ESSM Production Phase Information to be received will be consistent with the objectives stated in Section 2 (Objectives), Section 3 (Scope of Work), and the operational requirements set forth in the ESSM Requirements Document, Revision 5, 22 October 1993 and revisions thereto.
- 9.1.2 The Contributing Participants will disclose to Non-contributing Participants selected ESSM Production Phase Information as determined in accordance with Section 4 (Management (Organization and Responsibility)), paragraph 4.5.3. The Non-contributing Participants will have the right to use this information only for evaluation and planning purposes related to integration of ESSM into NATO SEASPARROW Systems, but will have no rights to disclose or transfer this information.
- 9.1.3 Notwithstanding any other provision in this section, the U.S. will not disclose ESSM Production Phase Information related to ESSM U.S. Unique Item production and manufacturing design data, manufacturing know-how, and software source code and documentation, nor ESSM U.S. employment doctrine, raw test data, U.S.-specific threat data, and ESSM countermeasures vulnerability, unless otherwise authorized by the U.S. pursuant to its national disclosure laws and policies. The U.S. will, however, make available to the Contributing Participants, subject to national disclosure laws and policies, ESSM Production Phase Information sufficient to enable effective prelaunch and post launch ESSM integration into current and planned anti-air warfare systems.

### 9.2 Government ESSM Production Phase Foreground Information

- 9.2.1 Disclosure: ESSM Production Phase Foreground Information generated by any government facility in whole or in part will be made available without charge to all Contributing Participants.
- 9.2.2 Use: Each Contributing Participant may use or may have used on its behalf this ESSM Production Phase Foreground Information without charge for its Defense Purposes; however, if a Contributing Participant intends to use the ESSM Production Phase Foreground Information in a sale or other transfer to a Third



Party, the provisions of Section 13 (Third Party Sales and Transfers) of this MOU will apply.

### 9.3 Government ESSM Production Phase Background Information

9.3.1 Disclosure: Each Contributing Participant, upon request, will disclose without charge to all Contributing Participants any relevant ESSM Production Phase Background Information in its possession, provided that:

9.3.1.1 It is necessary to or useful in the ESSM Production Phase. The Contributing Participant in possession of the information, in consultation with the other Contributing Participants, will determine whether it is "necessary to" or "useful in" the ESSM Production Phase.

9.3.1.2 It may be made available without incurring liability to holders of proprietary rights (to include exclusive user rights).

9.3.1.3 Disclosure is consistent with national disclosure laws and policies of the furnishing Participant.

9.3.2 Use: ESSM Production Phase Background Information disclosed by one Contributing Participant may be used without charge by the other Contributing Participants for ESSM Program purposes only and on fair and reasonable terms for Defense Purposes. However, the furnishing Participant will retain all its rights with respect to such ESSM Production Phase Background Information.

### 9.4 Contractor ESSM Production Phase Foreground Information

9.4.1 Disclosure: ESSM Production Phase Foreground Information which is generated by a Contractor and is a deliverable under a Contract will be made available without charge to all Contributing Participants. Foreground information generated by a Contractor but not delivered should be made available by the Contractor upon request of the Contributing Participants at the cost of its compilation, reproduction, and delivery only.

9.4.2 Use: Each Contributing Participant may use or may have used on its behalf, this ESSM Production Phase Foreground Information without charge for its Defense Purposes; however, if a Contributing Participant intends to use the ESSM Production Phase Foreground Information in a sale or other transfer to a Third Party, the provisions of Section 13 (Third Party Sales and Transfers) of this MOU will apply. The Participants will consider acquiring the legal rights to use Contractor ESSM Production Phase Foreground Information in a sale.

9.5 Contractor ESSM Production Phase Background Information

9.5.1 Contractor ESSM Production Phase Background Information Delivered Under Contracts

9.5.1.1 Disclosure: ESSM Production Phase Background Information delivered under Contracts awarded in accordance with this MOU will be made available without charge to all Contributing Participants.

9.5.1.2 Use:

9.5.1.2.1 Contractor ESSM Production Phase Background Information delivered under Contracts without limitation on rights of use and transfer may be used by the Contributing Participants without charge for ESSM Program purposes and for Defense Purposes, on fair and reasonable terms, if necessary.

9.5.1.2.2 Contractor ESSM Production Phase Background Information delivered under Contracts subject to limitations on rights of use and transfer may be used by the Contributing Participants subject to the terms of the holders of the rights to that information.

9.5.2 Other Contractor ESSM Production Phase Background Information

9.5.2.1 Disclosure: Any other Contractor ESSM Production Phase Background Information generated by Contractors which is in the possession of a Contributing Participant will be made available without charge to the other Contributing Participants upon request, provided the following conditions are met:

9.5.2.1.1 It is necessary to or useful in the ESSM Production Phase. The Contributing Participant in possession of the information in consultation with the other Contributing Participants will determine whether it is "necessary to" or "useful in" the ESSM Production Phase.

9.5.2.1.2 It may be made available without incurring liability to holders of proprietary rights (to include exclusive user rights).

9.5.2.1.3 Disclosure is consistent with national disclosure laws and policies of the furnishing Participant.

9.5.2.2 Use:

9.5.2.2.1 Contractor ESSM Production Phase Background Information, that satisfies all the conditions set forth in 9.5.2.1 above, may be used by the Contributing Participants without charge for ESSM Program purposes and for Defense Purposes, on fair and reasonable terms, if necessary.

9.5.2.2.2 Contractor ESSM Production Phase Background Information satisfying the conditions set forth in 9.5.2.1.1 and 9.5.2.1.3, but not satisfying the conditions set forth in 9.5.2.1.2 above, will be disclosed to and may be used by the Contributing Participants subject to the terms of the holders of proprietary rights.

9.5.2.2.3 The furnishing Participant will retain all its rights with respect to such Contractor ESSM Production Phase Background Information it furnishes.

9.6 Proprietary ESSM Production Phase Information. All ESSM Production Phase Information subject to proprietary interest will be identified and appropriately marked. Unmarked information will be assumed to be free from any proprietary rights restrictions.

9.7 Patents

9.7.1 Where a Participant owns title to an ESSM Production Phase Invention or has the right to receive title to an ESSM Production Phase Invention, that Participant will consult with the other Participants regarding the filing of its Patent application for such ESSM Production Phase Invention. The Participant which has or receives title to such ESSM Production Phase Invention will, in other countries, file, cause to be filed, or provide the other Participants with the opportunity to file on its behalf or its Contractors, as appropriate, Patent applications covering that ESSM Production Phase Invention. If a Participant having filed or caused to be filed a Patent application decides not to proceed with application, that Participant will notify the other Participants of that decision and permit the other Participants to continue the prosecution.

9.7.2 The other Participants will be furnished with copies of Patent applications filed and Patents granted with regard to ESSM Production Phase Inventions.

9.7.3 The other Contributing Participants will acquire a nonexclusive, irrevocable, royalty-free license to practice or have practiced, by or on behalf of the Contributing Participants, throughout the world for Defense Purposes any ESSM Production Phase Invention.

- 9.7.4 Each Participant will notify the other Participants of any Patent infringement claims made in its territory arising in the course of work performed under the ESSM Production Phase. Insofar as possible, the other Participants will provide information available to them that may assist in defending the claim. Each Participant will be responsible for handling all Patent infringement claims made in its territory and will consult with the other Participants during the handling, and prior to any settlement, of such claims. The Participants will, in accordance with their national laws and practices, give their authorization and consent for all use and manufacture in the course of work performed under the ESSM Production Phase of any invention covered by a Patent issued by their respective countries.

## SECTION 10. CONTROLLED UNCLASSIFIED INFORMATION

- 10.1 Except as otherwise provided in this MOU or authorized in writing by the originating Participant, Controlled Unclassified Information provided or generated pursuant to this MOU will be controlled as follows:
  - 10.1.1 Such information will be used only for the purposes authorized for use of ESSM Production Phase Information as specified in Section 9 (Disclosure and Use of ESSM Production Phase Information).
  - 10.1.2 Access to such information will be limited to personnel whose access is necessary for the permitted use under paragraph 10.1.1. and will be subject to the provisions of Section 13 (Third Party Sales and Transfers).
  - 10.1.3 Each Participant will take all lawful steps, which may include national classification, available to it to keep such information free from further disclosure (including requests under any legislative provisions), except as provided in paragraph 10.1.2., unless the originating Participant agrees to such disclosure. In the event of unauthorized disclosure, or if it becomes probable that the information may have to be further disclosed under any legislative provision, immediate notification will be given to the originating Participant.
- 10.2 To assist in providing the appropriate controls, the originating Participant will ensure that Controlled Unclassified Information is appropriately marked. The Participants will decide, in advance and in writing, on the markings to be placed on the Controlled Unclassified Information. The appropriate markings will be defined in the Project Security Instruction.
- 10.3 Prior to authorizing the release of Controlled Unclassified Information to Contractors, the Participants will ensure the Contractors are legally bound to control such information in accordance with the provisions of this MOU.

## SECTION 11. VISITS TO ESTABLISHMENTS

- 11.1 Each Participant will permit visits to its government establishments, agencies, and laboratories, and contractor facilities by employees of the other Participants or by employees of the other Participants' contractor(s), provided that the visit is authorized by the Participants involved in the visit, and the employees have any necessary and appropriate security clearances and a need-to-know.
- 11.2 All visiting personnel will be required to comply with security regulations of the host Participant. Any information disclosed or made available to visitors will be treated as if supplied to the Participant sponsoring the visiting personnel and will be subject to the provisions of this MOU.
- 11.3 Requests for visits by personnel of one Participant to a facility of another Participant will be coordinated through official channels and will conform with the established visit procedures of the host country. Requests for visits will bear the name of the ESSM Program.

## SECTION 12. SECURITY

- 12.1 All Classified Information or material provided or generated pursuant to this MOU will be used, stored, handled, transmitted, and safeguarded in accordance with the Participants' applicable national security laws and regulations to the extent that they provide a degree of protection no less stringent than that provided for NATO classified material as set forth in the NATO Document C-M(55) 15(Final) dated 1 July 1993, including all supplements and amendments thereto.
- 12.2 Classified Information and material will be transferred only through official government-to-government channels or through channels approved by the DSA of the Participants. Such information and material will bear the level of classification, denote the country of origin, the conditions of release, and the fact that the information relates to this MOU.
- 12.3 Each Participant will take all lawful steps available to it to ensure that information provided or generated pursuant to this MOU is protected from disclosure, except as permitted by paragraph 12.7, unless the other Participants agree to such disclosure. Accordingly, each Participant will ensure that:
- 12.3.1 The recipient will not release the Classified Information to any individual, government, national organization, or other entity of a Third Party without the prior written approval of the originating Participant in accordance with the procedures set forth in Section 13 (Third Party Sales and Transfers).
  - 12.3.2 The recipient will not use the Classified Information for any purpose other than the purposes provided for in this MOU.
  - 12.3.3 The recipient will comply with any distribution and access restrictions on information that is provided under this MOU.
- 12.4 The Participants will investigate all cases in which it is known or where there are grounds for suspecting that Classified Information or material provided or generated pursuant to this MOU has been lost or disclosed to unauthorized persons. Each Participant also will promptly and fully inform the other Participants of the details of any such occurrences, the final results of the investigation, and the corrective action taken to preclude recurrences.
- 12.5 Contractors, prospective Contractors, or subcontractors which are determined by DSAs to be under financial, administrative, policy or management control of nationals or entities of a Third Party may participate in a Contract or subcontract requiring access to Classified Information provided or generated pursuant to this MOU only when enforceable measures are in effect to ensure that nationals or other entities of a Third Party will not have access to Classified Information. If enforceable measures are not in effect to preclude access by nationals or other entities of a Third Party, the Participants will concur before permitting such access.

- 12.6 For any facility wherein Classified Information or material is to be used, the responsible Participant or Contractor will approve the appointment of a person or persons to exercise effectively the responsibilities for safeguarding at such facility the information or material pertaining to this MOU. These officials will be responsible for limiting access to Classified Information or material involved in this MOU to those persons who have been properly approved for access and have a need-to-know.
- 12.7 Each Participant will ensure that access to the Classified Information is limited to those persons who possess requisite security clearances and have a specific need for access to the information in order to participate in the ESSM Production Phase.